WONG NGAR

v.

MAJLIS PERBANDARAN JOHOR BAHRU

HIGH COURT MALAYA, JOHOR BAHRU
DATO' MOHD GHAZALI BIN MOHD YUSOFF JC
[ORIGINATING SUMMONS NO. 249 OF 1993]
10 NOVEMBER 1994

LOCAL GOVERNMENT : *Applicant objecting to assessment of rate imposed on his property - Local authority hearing objection and revising rateable value - Applicant unhappy with revised rate - Applicant failing to appeal to High Court within time period prescribed by s. 145 Local Government Act 1976 - Application for extension of time - Whether the Court has the power to enlarge the time prescribed for filing the appeal - Whether the Court has inherent jurisdiction to do so.*

The applicant is the owner of a piece of land in Johor Bahru. The applicant was informed by the Majlis Perbandaran Johor Bahru (MPJB) that the rateable value of his property had been revised and he was informed of the new annual rate payable. The applicant filed an objection under s. 142(1) of the Local Government Act 1976 (the Act) and after hearing the objection, MPJB reduced the amount of annual rate payable. The applicant made a second objection which was not entertained by MPJB.

The applicant then filed an application for extension of time to file an appeal to the High Court under s. 145 of the Act as the time prescribed for filing an appeal had expired.

The applicant contended that by virtue of clause 8 of the Schedule to the Courts of Judicature Act 1964 (CJA 1964) the Court had jurisdiction to exercise judicial discretion to enlarge the time prescribed for filing the appeal since the statutory right to appeal is not expressly time-barred.

The applicant further argued that he did not file his appeal within 14 days upon receipt of the said decision of MPJB as he had made a further request to MPJB to reconsider its decision in the light of further evidence which showed that the value of the said property was lower than that as assessed by MPJB.

MPJB on the other hand, contended that the Court had no such power to extend the time-limit and placed reliance upon s. 109 of the Interpretation Acts 1948 and 1967 (consolidated and revised-1989).

Held:

[1] Section 145(2) of the Act clearly provides that a person who has made an objection and who is still dissatisfied with the decision of the local authority may appeal to the High Court. Section 142 read together with s. 145 of the Act makes no provision for a further objection to be made by a property owner to the local authority.

[2] The Court's additional power under clause 8 of the Schedule to the CJA 1964 must be read subject to the proviso to s. 25(2) CJA 1964 which provides that such power shall be exercised in accordance with any written law or rules of Court relating to the same. There is no provision in the Local Government Act which gives the Court the power to enlarge or abridge the said 14 day time-limit. The 14 day time-limit prescribed under s. 145(2) of the Act is a mandatory provision and failure to comply with it is fatal.

[3] In the circumstances the Court has no power to enlarge time for the applicant to file an originating motion to appeal against the decision of MPJB with regard to the rate imposed upon the said property. Further, the Court also has no inherent jurisdiction to extend time in this matter.

[4] The applicant's contention, that the delay in filing the appeal was because of MPJB's delay in rejecting his second objection, was without merit. The applicant had throughout the whole episode dealt with MPJB through solicitors who would be in a position to advise him on the provisions of the Local Government Act. He had exercised his right to object to the first valuation and was given an opportunity to be heard. MPJB had considered his objection and had reduced the rateable value of the said property. It was for the applicant to have considered, upon receipt of MPJB's decision, whether to appeal to the Court. In failing to do so, he has allowed time to run out, for which he has nobody but himself to blame.

[Application dismissed with costs]

Cases referred to:
V. Sinnathamboo v. Minister for Labour & Manpower [1981] 1 MLJ 251 ***(foll)***
Kerridge v. Lamdin [1950] 2 All ER 1110 ***(refd)***
Chong Thian Yin & Ors v. The Trustees of the Estate of Cheang Kok Sang alias Cheang Kwok Sang, Decd and The Commissioner of Lands Federation of Malaya [1954] 20 MLJ 37 ***(refd)***
Lee Lee Cheng (f) v. Seow Peng Kwan [1960]26 MLJ 1 ***(foll)***

Legislation referred to:
Local Government Act 1976, ss. 137(4), 141(3), 142, 143(3), 145(2)
Courts of Judicature Act 1964, s. 25(2), clause 8
Industrial Relations Act 1967, s. 17(1)
Interpretation Act 1989 (Consolidated & Revised), s. 109

For the plaintiff - Tay Bee Choo; M/s. Sze-Ping & Tay
For the respondent - Lokman bin Yusof; M/s. Khaled & Zainuddin

JUDGMENT

Mohd. Ghazali bin Mohd. Yusoff JC:
The applicant is seeking an extension of time to file an appeal to this Court pursuant to s. 145 of the Local Government Act 1976 against the decision of the Majlis Perbandaran Johor Bahru, the respondent (hereafter referred to as "MPJB"), with regard to the assessment of rate imposed upon his property by the said MPJB under the provisions of the said Act.

The background to the application is as follows:

The applicant is the owner of a piece of land measuring 10,350 square feet (961.54 square metres) known as lot 52077, Jalan Firma 2/1, Kawasan Perindustrian Tebrau, Johor Bahru (hereafter called "the said property") upon which stands a two-storey factory. The said property is situated within the area of jurisdiction of the MPJB, the local authority responsible for the district of Johor Bahru. It is not disputed that the said property is a "rateable holding" within the definition of the said Act which provides:

> s.2. "reateable holding" means a holding which is subject to the payment of a rate made and levied under the Act;.

Via a notice dated 1November 1991, the applicant was informed by MPJB that the rateable value of the said property has been revised to RM959,00 and that the annual rate payable,

commencing 1992, based upon 0.4% of the value, is RM3,835. The said notice stated that any objection with regard to the amount of rate imposed, as allowed under s. 142 of the said Act, may be made on or before 1 December 1991. The said section reads:

> s.142. (1) Any person aggrieved on any of the following grounds -
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> (a) that any holding for which he is rateable is valued beyond its rateable value;
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> (b) ...;
>
> (c) ...;
>
> (d) ...;
>
> (e) ...;
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> may make objection in writing to the local authority at any time not less than fourteen days before the time fixed for the revision of the valuation list.
>
> (2) All objections shall be enquired into and the persons making them shall at such enquiry be allowed an opportunity of being heard either in person or by an authorised agent.

The applicant's solicitors filed his objection by a letter dated 12 November 1991 arguing that the value of the said property as assessed was excessive and beyond its rateable value. He requested MPJB to reconsider the matter.

On 4 July 1992, as a result of his objection, the applicant was invited to attend an enquiry at MPJB wherein he submitted a valuation report of the said property, dated 30 June 1992, prepared by a private firm of valuers who valued it at RM580,000. Pursuant to the enquiry, MPJB *via* its letter dated 28 February 1993, informed the applicant that it has decided to reduce the rateable value of the said property to RM902,000 and that the annual rate payable, based upon 0.4% of the said value, is now RM3,608. The applicant received the said letter on 4 March 1993 and subsequently on 8 March 1993, his solicitors responded by making a second objection by letter which was received by MPJB on 15 March 1993. MPJB responded by letter dated 31 March 1993 informing the applicant that the decision dated 18 February 1993 was final.

On 14 April 1993 the applicant filed this application requesting that time be enlarged for him to appeal to this Court against the decision of MPJB since he was out of time. Section 145 of the said Act provides that a person who is dissatisfied with the decision of a local authority regarding the rateable value of his property has to file his appeal to Court within 14 days upon receipt of the said decision; s. 145 reads:

> s.145. (1) Any person who having made an objection in the manner prescribed by s. 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion:
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> Provided that with the filing of the originating motion there shall be paid into the local authority the amount of the rate appealed against.
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> (2) The originating motion shall be filed by the person dissatisfied with the decision of the local authority within fourteen days of the receipt thereof.
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> (3) .....
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> (4) .....
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> (5) .....

(6) .....

From the above facts, it is clear that the applicant concedes that he is out of time. He received the decision of MPJB on 4 March 1993 and pursuant to s. 145(2) of the said Act, he is required to file his appeal to this Court on or before 18 March 1993. Thus, the only issue in this application is whether the Court has the power to enlarge time to appeal under s. 145(2) of the said Act.

At the hearing of this application, which was based upon written submissions volunteered by both parties, Counsel for the applicant argued that he did not file his appeal within 14 days upon receipt of the said decision of MPJB on 4 March 1993 as he had made a further request to MPJB to reconsider its decision since he had only subsequently come into possession of further evidence to show that the value of the said property was lower than that as assessed by MPJB. To avoid unnecessary litigation he made the further request for a review as he was of the view that the matter could be settled amicably.

In my opinion no such procedure exist in the Act which provides that a property owner can make a second 'objection'. Section 145(2) clearly provides that such a person who has made an objection and who is still dissatisfied with the decision of the local authority may appeal to the High Court. Section 142 read together with s. 145 of the said Act do not at all provide that a further objection can be made to the local authority. To me, there can never be any finality to any revision exercise of the Valuation List conducted by a local authority and consequently the imposition of rates if disgruntled property owners are allowed to make as many objections as they wish and surely that is not what was intended by Parliament when those relevant provisions were introduced into the said Act. If such is the effect of those provisions, a local authority will never be able to impose new rates as s. 143(3) provides that until the objection has been heard and determined, the increase in valuation or new valuation objected to shall not be deemed to be in force and the old rates shall continue to be payable. Section 137(4) of the said Act impose a duty upon a local authority to prepare a Valuation List once every five years and if more than one objection is allowed, the Valuation List can never be prepared and completed and the local authority will never be able to perform this statutory duty.

The applicant had further argued that clause 8 of the Schedule to the Courts of Judicature Act 1964 (which lists the additional powers of the High Court) empowers it to enlarge or abridge the time prescribed by any written law; the said clause 8 reads:

> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed:
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> Provided that this provision shall be without prejudice to any written law relating to limitation.

To me, this schedule should be read together with s. 25(2) of the Courts of Judicature Act which provides:

> s.25 (2) Without prejudice to the generality of subsection(1) the High Court shall have the additional powers set out in the schedule:
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> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

Counsel for the applicant argued that by virtue of the said clause 8 this Court has jurisdiction to exercise judicial discretion to enlarge the time prescribed for filing the appeal since

the statutory right to appeal is not expressly time-barred. With respect, I do not agree. Section 137 of the Local Government Act, as discussed earlier, imposes a duty upon a local authority to cause a Valuation List of all holdings not exempted from the payment of rates to be prepared, the contents of which shall include the annual value or improved value of the holding and that a new Valuation List shall be prepared and completed once every five years or within such extended period as the State Authority may determine. Section 141(3) of the Act provides in all cases in which any holding is for the first time valued or the valuation thereon had increased the local authority shall give notice to the owner or occupier thereof. Any person aggrieved may make his objection in writing to the local authority (s. 142(1)) and he shall be allowed an opportunity of being heard (s. 142(2)). Any person who having made an objection in the manner as prescribed by s. 142 is dissatisfied with the decision of the local authority may appeal to the High Court within 14 days of the receipt of the decision. There is no provision in the Act which provides that the Court can extend the 14 day time-limit to file the appeal.

This Court's additional power under the said clause 8 of the Schedule to the Courts of Judicature Act, *viz*., power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, must be read subject to the proviso to s. 25(2) of the Act which provides that such power shall be exercised in accordance with any written law or rules of Court relating to the same. The Local Government Act does not provide this Court with power to enlarge or abridge the said 14 day time-limit. To me, the 14 day-time limit prescribed under s. 145(2) of the Local Government Act is a mandatory provision and failure to comply is fatal.

In *V. Sinnathamboo v. Minister for Labour & Manpower* [1981] 1 MLJ 251, the issue for determination was whether non-compliance with the one month rule in s. 17(1) of the Industrial Relations Act 1967 (now s. 20(1) of the revised Act) is fatal to the applicant's right to make representations in writing to the Director-General for Industrial Relations. The said s. 17(1) (which is in *pari materia* with s. 20(1) of the revised Act) reads:

> Where a workman who is not a member of a trade union of workmen considers that he had been dismissed without just cause or excuse by his employer he may, within one month of the dismissal, make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.

In his judgment, Mohamed Azmi J said (at page 253):

> In the event, I was of the view that the one month time-limit prescribed under s. 20(1) of the revised Act was a mandatory provision; and failure to comply was fatal to a workman who was not a member of a trade union. In my view, that was the most natural interpretation of s. 20(1) having regard to the clear words used by Parliament... If it was the intention of Parliament to make the time-limit as a mere directory provision, then it would say so clearly. In the instant case, there was no justification for the Court to import words into s. 20. The social nature of this legislation was not affected by given s. 20(1) its natural and ordinary meaning.

What has been stated by Mohamed Azmi J in the above-mentioned case, would, in my view, be equally applicable to s. 145(2) of the Local Government Act. Section 145(2) is a mandatory provision and I do not agree with the contention that the said clause 8 of the Schedule to the Courts of Judicature Act can be resorted to by this Court to give it power to enlarge time when no such express provision can be found in the Local Government Act. There is

no justification, in the words of Mohamed Azmi J, for this Court to import words into s. 145(2) which were never intended by Parliament. As such, I cannot see how I am able to exercise a judicial discretion, as urged by the applicant's Counsel, to enlarge time to file the appeal, when such discretion do not at all exist within the provisions of the Local Government Act.

Counsel for MPJB submitted that this Court has no such power to extend the time-limit and urged the Court to dismiss this application. To support his contention he referred to s. 109 of the Interpretation Acts 1948 and 1967 (Consolidated and Revised - 1989) (Act 388) which reads:

> Where in any written law a time is prescribed for doing any act or taking any proceeding and power is given to a Court or other authority to extend such time, unless the contrary intention appears the power may be exercised by the Court or other authority although the application for the same is not made until after the expiration of the time prescribed.

He argued that before the Court can enlarge time it must have the express power under the relevant Act to do so. I agree with him. In *Kerridge v. Lamdin* [1950] 2 All ER 1110, the Court of Appeal held that the Court has no power to extend a period of time limited by statute for doing an act unless the statue so provides. At page 1113 Jenkins, LJ said:

> One reaches a conclusion of this kind with some regret, for it is never very satisfactory that a possibly meritorious claim should be excluded merely because the claimant has inadvertently allowed time to expire, but, where a statute confers a right and stipulates that it must be exercised within a prescribed period, that period must be observed, and, in the absence of any provision in the Act allowing the time to be relaxed, failure to observe the prescribed period must inevitably be fatal to the claim.

In *Chong Thian Yin & Ors v. The Trustees of the Estate of Cheang Kok Sang alias Cheang Kwok Sang, Decd and The Commissioner of Lands Federation of Malaya* [1954] 20 MLJ 37 at page 38, the Judge said:

> Grove, J., used the following words, which so far as I am aware have never since been disapproved of and which to my mind conclude the matter:
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> > In construing Acts of Parliament, provisions which appear on the face of them obligatory, cannot, without strong reasons given, be held only directory. The rule is, that provisions with respect to time are always obligatory unless a power of extending the time is given to the Court, and there is no such power here.

In *Lee Lee Cheng (f) v. Seow Peng Kwan* [1960]26 MLJ 1, in dealing with item 12 of the Second Schedule to the Courts Ordinance 1948 (which is in *pari materia* with the said clause 8 of the Schedule to the Courts of Judicature Act), Rigby J said (at page 4):

> In my view the judgment of Barakbah, J. was entirely correct in holding that item 12 in the Second Schedule of the Courts Ordinance, 1948, is merely declaratory of the jurisdiction of the High Court to enlarge the time prescribed by any written law for doing any act or taking any proceeding, always providing there is express provision in the particular written law itself which enables such time to be enlarged. Any other construction of the section would, in my view, simply nullify the purpose and effect of the law relating to the limitation of actions.

In the light of the authorities referred to above, it is my finding that this Court has no power to enlarge time for the applicant to file an originating motion to appeal against the decision

of MPJB with regard to the rate imposed upon the said property. It is also my finding that the Court has no inherent jurisdiction to extend time in this matter.

The applicant had argued that when he appealed to MPJB to reconsider the reduced rate, MPJB only replied on 31 March 1993 and it is because of this delayed reply that he did not file an originating motion to appeal against he said decision dated 28 February 1993. Furthermore he had written to MPJB on 8 March 1993 requesting them to reconsider the valuation as he wanted to save time, effort and cost in avoiding litigation. I cannot see any merit in this contention. The applicant had throughout the whole episode dealt with MPJB through solicitors who would be in a position to advise him on the provisions of the Local Government Act. He had exercised his right to object to the first valuation and was given an opportunity to be heard. MPJB had considered his objection and had reduced the rateable value of the said property and imposed a lesser rate. It was for him to have considered on 4 March 1993 upon receipt of MPJB's decision, whether to appeal to this Court. The ball was at his feet so to speak. In failing to do so, he has allowed time to run out, for which he has nobody but himself to blame. He cannot turn around and say that it is as much the duty of MPJB as well as him not to load the Court with frivolous litigation. That, is certainly a non-issue.

The application must accordingly be dismissed with costs.